(3)

8/10

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

MISC CIVIL CASE NO. 37 OF 2005

Single Bench

IN THE MATTER OF:

W.P. NO.4653/2004 BETWEEN:

PETITIONER: Smt. Asha Gupta, wife of Shri B.P. Gupta, aged about 61 years, resident of B-11/5, Indira Nagar, Lucknow, c/o shri Raj Bahadur Kashyap, Adarsh Nagar Bal Vidya Mandir, Gandhi Chowk, Raipur, Chhattisgarh.

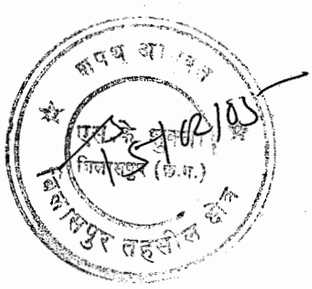
P.R. No. 4484/05
Presented by Shri B.P. Sharma
dated 18-02-05

VERSUS

RESPONDENTS:

1. Municipal Corporation, through Commissioner, Municipal Raipur.
2. Town Planning Authority (Nagar Nivash Adhikari) Municipal Corporation, Raipur (C.G.).

APPLICANT: - SHEKHAR CHAND SHRIVASTAVA, SON OF LATE RAMESHWAR PRASAD SHRIVASTAVA, AGED ABOUT 48 YEARS, RESIDENT OF HOUSE NO.09/11-14, BUDAPARA, SWAMI VIVEKANAND WARD, RAIPUR.



(84)

APPICATION FOR CLARIFICATION / MODIFICATION OF THE ORDER DATED 7.1.2005

XI-HC-22

(24)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक M.C.C. 37/05 **सन्** 200

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	21.4.2005. Mr. B.P. Sharma, counsel for the applicant. This M.C.C. has been preferred by applicant herein namely Shekhar Chand Shrivastava for clarification of order dated 7.1.2005 passed by this Court in W.P. No.4653/04 filed by Smt. Asha Gupta against the Municipal Corporation, Raipur & another for issuance of a direction to the respondent Corporation to act in accordance with provisions of Sections 309 & 310 of the Municipal Corporation Act in respect of the house bearing Nos. 9/11, 9/12, 9/13 & 9/13 situated at Budapara Ward, Raipur of which Smt. Asha Gupta claimed to be the owner. It was mentioned in that petition that respondent No.2 vide notice dated 1.5.1993 served a notice on the petitioner saying that since the building has become dilapidated and unsafe for human habitation, therefore, same may be demolished by the petitioner herself, failing which demolition work will be carried out by the Municipal Corporation. Copy of the notice was filed as Annexure P-3 in that writ petition. Now the applicant herein, who is claiming to be a tenant in that building, has filed this petition for clarification of that order on the ground that Smt. Asha Gupta is treating the dismissal order in her favour and she is claiming that this Court has directed her to demolish the building that is why she is entitled to demolish the building. In order to appreciate the point raised by learned counsel for the applicant herein it would be relevant to mention the operative part of the order dated 7.1.2005, which is reproduced herein below:	

XI-HC-22

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... **विरुद्ध** .....

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"...But, in the first instance, responsibility lies on the shoulders of the petitioner to demolish the building after receiving the notice from the respondents Corporation. Even she can herself act according to the provisions of the Act and if any tenant is not vacating the building then she is entitled to take course of remedy available to her under the law."

The above order was passed while dismissing the writ petition mentioning therein that since the petitioner has received a notice from respondent No.2 for demolition of her house then the responsibility lies on her shoulders to comply with the notice or challenge the notice in accordance with law. The above order of the Court cannot be interpreted like that any direction has been issued to the petitioner to demolish the house. While dismissing the petition of the petitioner that petitioner is not entitled for any direction by this Court to respondent No.2 to demolish the building, it was simply mentioned that the petitioner can deal with the notice received by her in accordance with law

Therefore, I am of the opinion that this order was never intended to give any direction to the petitioner, in that case simply the position was made clear that the petitioner can act in accordance with law and no direction can be given by the Court to respondent No.2 i.e. Town & Country Planning to demolish the building. As such that order is very clear and same does not require any clarification.

In view of the above, I do not find any substance in this petition, same is liable to be dismissed and it is, accordingly, dismissed.

Sd/-
L.C. Bhadoo
Judge

26/4/05
R I 28/4/05